



2. Vanguard Asset Management LTD. purports to be an entity located in Cyprus, Nicosia.
3. Ian Caldwell (“Caldwell”) purports to be a licensed investment broker employed by BFS and has a purported business address of 4400 Blue Parkway, Kansas City, Missouri 64130.
4. Simon McDevitt (“McDevitt”) purports to be a licensed investment broker employed by BFS and has a purported business address of 4400 Blue Parkway, Kansas City, Missouri 64130.
5. Alistar McIntyre (“McIntyre”) purports to be a licensed investment broker employed by BFS and has a purported business address of 4400 Blue Parkway, Kansas City, Missouri 64130.
6. Robert S. Hale (“Hale”) purports to be a partner of BFS and has a purported business address of 4400 Blue Parkway, Kansas City, Missouri 64130.
7. David Westcott (“Westcott”) is a contact person for BFS and has a purported business address of 4400 Blue Parkway, Kansas City, Missouri 64130.
8. Supavadee Tunyakul (“Tunyakul”) is a contact person for BFS and has a purported business address of 4400 Blue Parkway, Kansas City, Missouri 64130.
9. As used in this Cease and Desist Order, the term “Respondents” refers to McDevitt, McIntyre, Caldwell, Hale, Westcott, Tunyakul and BFS.
10. Birchtree Financial Services, Inc., (“Birchtree ”), is an Oklahoma corporation engaged in the business of providing investment banking services. Birchtree is registered with the National Association of Securities Dealers (CRD #15014) and has its principal office location of 3600 W. 80<sup>th</sup> Street, Bloomington, Minnesota 55431 with an affiliate office location at 4400 Blue Parkway, Kansas City, Missouri 64130.
11. On November 3, 2003, a resident of Australia (“PB”) contacted the Division regarding Caldwell and BFS and forwarded documents to the Division that BFS had sent to PB using a BFS letterhead. The letterhead included an address of 4400 Blue Parkway, Kansas City, MO 64130, a telephone number of 816-448-3760, a fax number of 816-448-3101, and a website address of [www.birchtree.com](http://www.birchtree.com).
12. Documents submitted to this office by PB included:
  - a. A Confirmation dated December 1, 2003, for the transfer of 1,375 shares of Yahoo stock to PB;
  - b. A Stock Purchase Agreement dated November 25, 2003, for the purchase of 10,998 shares of PB’s Geo Alert, Inc. stock by BFS; and

- c. Remittance Instructions advising PB to remit funds in the amount of \$27,000 to the National Bank of Greece (Cyprus) preferably by telex or wire transfer to an account in the name of Vanguard Asset Management Ltd.
13. PB did not transact business with BFS.
14. On December 15, 2003, a second Australian resident (MM) contacted the Division regarding McIntyre, McDevitt and BFS. McIntyre and McDevitt told MM, among other things:
- a. McIntyre and McDevitt were licensed investment bankers and all transactions through them were fully insured by the government.
  - b. McIntyre and McDevitt wanted MM to transfer funds to a bank in Greece for the purchase of shares of stock from MM.
  - c. McIntyre and McDevitt quoted their address for their Head Office as 4400 Blue Parkway, Kansas City, Mo 64130 and the telephone number as (816) 448 3101 and the fax number as (816) 448-3101.
15. Documents submitted to this office by MM included the following:
- a. Stock Purchase Agreement dated December 7, 2003;
  - b. Guarantee dated December 7, 2003; and
  - c. Terms of Agreement.
16. On December 16, 2003, a third Australian resident (PH) contacted the Division regarding a telephone call received in early November 2003 from Caldwell and BFS. A BFS employee told PH, among other things:
- a. BFS was interested in purchasing PH's Geo Alert shares of stock on behalf of another investor;
  - b. PH's Geo Alert shares were to be purchased by BFS and PH would in return receive shares of stock in Yahoo;
  - c. BFS was a member of Securities Investor Protection Corporation (SIPC); and
  - d. PH would be required to deposit money that would be held in escrow in Nicosia, Cyprus, in a Vanguard Asset Management account to comply with "short sale" regulations and was to be returned when the sale was completed.

17. PH sent the requested deposit of \$13,125 to Vanguard Asset Management in Nicosia Cyprus but had not received a return of the deposit.
18. PH had attempted to contact Caldwell at the Kansas City office but was told that Caldwell was unavailable.
19. A check of the Central Depository Records ("CRD") records confirmed that Daniel Marcotte is President of a broker-dealer located in the State of Minnesota called Birchtree Financial Services, Inc. and Birchtree has the CRD number #15014.
20. On December 17, 2003 a Missouri Securities Division employee contacted Marcotte. Marcotte stated that Birchtree is no longer located in Kansas City, Missouri, and the BFS business from the Kansas City location is not affiliated with Birchtree. Additionally, the telephone and facsimile numbers and the website are not those of Birchtree.
21. On December 17, 2003, Marcotte sent a copy of a letter from H&R Block to the Division that was sent via email and facsimile to BFS, which stated, among other things, that;
  - a. Birchtree Financial Services, Inc. was a wholly-owned, indirect subsidiary of H&R Block, Inc. and a direct subsidiary of RSM McGladrey, Inc.;
  - b. BFS, Caldwell, McIntyre and McDevitt were not affiliated with H&R Block, Inc. or any of its subsidiaries. H&R Block, Inc. affiliates occupy all of the offices located at 4400 Blue Parkway, Kansas City, Missouri, 64130. This was also the former official address of Birchtree Financial Services, Inc.;
  - c. No H&R Block, Inc. affiliate had ever authorized BFS to use this address or the name "Birchtree Financial Services"; and
  - d. "As the parent corporation of Birchtree Financial Services, Inc., we hereby demand that you and your associates immediately cease and desist from (a) using the name "Birchtree Financial Services" and (b) listing or referring to your address as being 4400 Blue Parkway, Kansas City, Missouri 64130 in any manner whatsoever."
22. Regus Business Center ("Regus"), provided "virtual office" services to BFS in the form of answering the telephone number listed on BFS' letterhead as well as receiving and rerouting facsimiles sent to the number on BFS' letterhead. According to the contract entered into between Regus and BFS:
  - a. The name of the contact person for BFS was Robert Hale;
  - b. The address for BFS is 3720 Howard Hughes Parkway, Las Vegas, Nevada 89109;
  - c. The telephone number for BFS is (530) 831-4028;

- d. Robert Hale's e-mail address is robertshale@hotmail.com;
  - e. BFS is engaged in the business of Corporate Consulting;
  - f. Services were to begin October 1, 2003;
  - g. Payment for services was to be monthly in advance through a credit card held by Supavadee Tunyakul through the SBC Siam Commercial Bank in Bangkok, Thailand 10110;
  - h. Telephone calls were to be answered "Birchtree Financial Services" and then a message taken to be forwarded to an e-mail address of robertshale@hotmail.com.
  - i. Mail and facsimiles were to be forwarded to (530) 831-4028.
23. According to documents received from Regus:
- a. The credit card to be used for payment of Regus' service fee was declined;
  - b. Correspondence sent by Regus to BFS' Las Vegas address was returned to them as "returned as unknown recipient;"
  - c. When Regus questioned BFS about the Las Vegas address, Hale responded "the address that was given is a brand new business complex in Nevada that is in the process of being completed, hence our need for your services;"
  - d. Hale stressed that all correspondence was to be sent to his e-mail address because he was overseas;
  - e. A payment for Regus' service fees of \$500 was paid by a personal money order purchased on November 24, 2003 at Bank of the West, Foothill Ranch, 26696 Portola Parkway, Foothill Ranch, California 92610;
24. According to written instructions given to Regus by BFS:
- a. "We need to give the impression that we are working from Kansas City. This will be our established base by the year-end. However in the interim our clients need to feel that we have a solid and established main office even though most of our consultants are spread globally with particular clients."
  - b. Simple greetings include "I am sorry but Mr. --- is not at his desk right now, can I take a message or put you through to his voicemail?"
  - c. More demanding callers were to be told "I am sorry sir/madam but due to reasons of corporate confidentiality I cannot comment on any business issues. You must

wait for your representative to call you back...” and “Even if the relevant representative is currently in the office I have been instructed not to put any calls through...”

25. A check of the records maintained by the Commissioner confirmed no registration for Respondents to sell securities in or from the State of Missouri.
26. Respondents were not registered to offer and sell securities in or from the State of Missouri.
27. In connection with the offer, sale or purchase of securities to Australian citizens and through the instrumentalities of their “virtual office” at Regus in Missouri, Respondents omitted to state the material fact that Respondents were not registered to sell securities in the State of Missouri.
28. In connection with the offer, sale or purchase of securities to Australian citizens and through the instrumentalities of their “virtual office” at Regus in Missouri, Respondents made untrue statements of material fact that:
  - a. Caldwell, McIntyre and McDevitt were working on behalf of Birchtree;
  - b. BFS was located at 4400 Blue Parkway, Kansas City, Missouri, 64130;
  - c. Investors were required to put money in escrow to complete the investment transactions;
  - d. The investors’ transactions were insured by the government; and
  - e. BFS was a member of SIPC.
29. In connection with the offer, sale, or purchase of securities to Australian citizens and through the instrumentalities of their “virtual office” at Regus in Missouri, Respondents have engaged in acts, practices, or courses of business that would operate as a fraud or deceit upon any person by:
  - a. Falsely posing on the Internet as Birchtree Financial Services, Inc., an authentic brokerage firm;
  - b. Misrepresenting that BFS had an address at 4400 Blue Parkway, Kansas City, Missouri, 64130;
  - c. Hiring an answering service in Kansas City, Missouri to take messages for BFS;
  - d. Advising the answering service to take messages and “give the impression that we [BFS] are working from Kansas City”;

- e. Contacting shareholders of a thinly traded security;
  - f. Offering to buy the thinly traded security at an attractive price;
  - g. Asking the seller to put money in an escrow account at a Nicosia, Cyprus Bank prior to the purchase of securities by BFS;
  - h. Misrepresenting that these escrowed funds would be returned to the seller once the transaction was completed;
  - i. Misrepresenting that the security transactions were insured by the government; and
  - j. Misrepresenting that BFS was a member of SIPC.
30. This Order is in the public interest.

#### **CONCLUSIONS OF LAW**

1. §409.1-102 of the Missouri Securities Act of 2003, RSMo Cumulative Supp. 2003, (hereafter “the 2003 Act”) includes “stock” within the definition of a security. The interests offered, sold or purchased by Respondents as described in the above findings of fact constitute securities.
2. §409.5-501 of the 2003 Act provides that it is unlawful for a person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ a device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or (3) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person. The conduct described in the above findings of fact constitutes a violation of this section.
3. §409.4-401(a) of the 2003 Act provides that it is unlawful for any person to transact business in this state as a broker-dealer unless the person is registered under the act or exempt from registration, as set forth at §409.4-401(b). The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.4-402(a) of the 2003 Act provides that it is unlawful for any person to transact business in this state as a agent unless the person is registered under the act or exempt from registration, as set forth at §409.4-402(b). The conduct described in the above findings of fact constitutes a violation of this section.
5. §409.4-402(d) of the 2003 Act provides that it is unlawful for any broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or

associate with an agent who transacts business in this state on behalf of broker-dealers or issuers, unless the individual is registered or exempt from registration. The conduct described in the above findings of fact constitutes a violation of this section.

6. §409.6-604(a) of the 2003 Act provides:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act;

7. §409.6-604(d) of the 2003 Act provides:

In a final order...the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

9. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.6-604(a) of the 2003 Act.

## **ORDER**

**NOW, THEREFORE**, it is hereby ordered that Respondents, their agents, employees and servants are prohibited from:

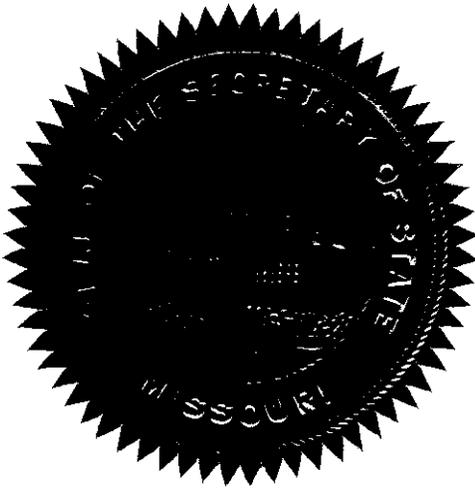
- A. Offering, selling or purchasing shares of stock in Geo Alert and/ or Yahoo;
- B. Violating or materially aiding in the violation of §409.5-501, of the 2003 Act, by making, in connection with the offer, sale or purchase of any security, untrue statements of material fact to any person, including, but not limited to, the following:
  1. Caldwell, McIntyre and McDevitt were working on behalf of Birchtree;
  2. BFS was located at 4400 Blue Parkway, Kansas City, Missouri, 64130;
  3. Investors were required to put money in escrow to complete the investment transactions;
  4. The investors' transactions were insured by the government; and

5. BFS was a member of SIPC.
- C. Violating or materially aiding in the violation of §409.5-501, of the 2003 Act, by engaging, in connection with the offer, sale or purchase of a security, in any act, practice or courses of business that operate or would operate as a fraud or deceit upon another person,
1. Falsely posing on the Internet as Birchtree Financial Services, Inc., an authentic brokerage firm;
  2. Misrepresenting that BFS had an address at 4400 Blue Parkway, Kansas City, Missouri, 64130;
  3. Hiring an answering service in Kansas City, Missouri to take messages for BFS;
  4. Advising the answering service to take messages and “give the impression that we [BFS] are working from Kansas City”;
  5. Contacting shareholders of a thinly traded security;
  6. Offering to buy the thinly traded security at an attractive price;
  7. Asking the seller to put money in an escrow account at a Nicosia, Cyprus Bank prior to the purchase of securities by BFS;
  8. Misrepresenting that these escrowed funds would be returned to the seller once the transaction was completed;
  9. Misrepresenting that the security transactions were insured by the government; and
  10. Misrepresenting that BFS was a member of SIPC.
- C. Violating or materially aiding in the violation of §409.4-401(a), of the 2003 Act, by transacting business as a broker-dealer without an effective registration;
- D. Violating or materially aiding in the violation of §409.4-402(a) of the 2003 Act by transacting business as an agent without an effective registration; and
- E. Violating or materially aiding in the violation of §409.4-402(d), of the 2003 Act, by employing or associating with an unregistered agent.

**IT IS FURTHER ORDERED** that the Enforcement Section has petitioned for civil penalties, and specifically, the award of \$10,000, jointly and severally, against each Respondent in this proceeding. The commissioner will issue a final order awarding this penalty, unless Respondents request a hearing and show cause why the penalty should not be imposed.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 5<sup>th</sup> DAY OF February, 2003.



MATT BLUNT  
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "Douglas M. Ommen". The signature is written in a cursive style with a long horizontal flourish extending to the left.

DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES